

SEP 30 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

ROSA SOSA,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-71105

INS No. A75-261-481

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 16, 2003**
San Francisco, California

BEFORE: HUG, GIBSON*** and FISHER, Circuit Judges.

Sosa argues that the BIA violated her procedural due process rights when it affirmed the IJ's decision to pretermite her asylum application without conducting

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

***The Honorable John R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

an evidentiary hearing and without allowing her to testify. We reject this claim. Petitioners must show prejudice to make out a due process violation, which Sosa has not done. *See Colmenar v. INS*, 210 F.3d 967, 972 (9th Cir. 2000). Nor is there anything in this record from which we can infer prejudice despite her failure to pinpoint the precise evidence she would have presented had she been given the opportunity. *Compare Agyeman v. INS*, 296 F.3d 871, 885 (9th Cir. 2002).

Sosa also argues that she had settled expectations of her placement in deportation proceedings rather than removal proceedings if her asylum application, which was filed before IIRIRA's effective date of April 1, 1997, was denied. Accordingly, she claims that the application of IIRIRA's removal provisions to her was impermissibly retroactive. She also argues that because the denial of an asylum application *necessarily* results in an INS proceeding, her case is distinguishable from *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594 (9th Cir. 2002), and that her placement in removal proceedings violated her due process rights. As Sosa concedes, however, her arguments are now foreclosed by *Vasquez-Zavala v. INS*, No. 01-70973, 2003 WL 1792909 (9th Cir. Apr. 7, 2003). Accordingly, Sosa's petition for review is DENIED.